



The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

### **ISSUES**

Claimant raises the following issue for decision by the Appeals Board.

- (1) What, if any, is the nature and extent of claimant's injury and/or disability?

Respondent raises the following issue in its brief to the Appeals Board.

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts the same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge awarded claimant a five permanent partial general body disability in the above matter, finding claimant had suffered accidental injury arising out of and in the course of his employment with respondent but had fail to qualify for work disability as he had returned to work at a comparable wage. The Appeals Board agrees and finds the evidence, while contradicted, establishes claimant did suffer accidental injury when he fell twice during his shift while performing his duties as a police officer on December 28, 1992.

With regard to whether claimant is entitled to a work disability or limited to his functional disability, the evidence supports a finding that claimant is entitled to a functional disability only. The medical evidence is somewhat contradictory regarding claimant's preexisting conditions and what, if any, impairment may have resulted from these accidents. The opinion of C. Reiff Brown, M.D., was most credible in assessing claimant an 11 percent whole body functional impairment, 6 percent of which was preexisting. This results in a five percent whole body permanent impairment as a result of this injury arising out of and in the course of his employment with respondent.

Claimant's request that the issue regarding work disability be left open was appropriately denied by the Court as no evidence in the record supported claimant's allegation that he was entitled to work disability. There is also no provision in the Workers Compensation Act allowing for the record to be left open indefinitely pending the development of a work disability. Should same develop, the utilization of K.S.A. 44-528 to request review and modification of the award would be appropriate. Therefore, the Appeals Board finds that the Award of Administrative Law Judge Kenneth S. Johnson should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Kenneth S. Johnson, dated June 19, 1997, should be, and is hereby affirmed and claimant, Arturo S. Lovington, Jr., is granted an award against respondent, City of Goodland, its insurance carrier, Employers Mutual Companies, and the Kansas Workers Compensation Fund for a five percent permanent partial general disability.

Claimant is entitled to 8.1 weeks temporary total disability compensation (converted from the paid temporary partial disability) at the rate of \$182.01 per week in the amount of \$1,474.28, followed by 406.90 weeks of permanent partial disability compensation at the rate of \$9.10 per week or in the amount of \$3,702.79, for a 5 percent permanent partial general disability, making a total award of \$5,177.07.

As of October 9, 1997, there is due and owing claimant 8.1 weeks of temporary total disability compensation at the rate of \$182.01 per week or \$1,474.28, followed by 241.33 weeks of permanent partial compensation at the rate of \$9.10 per week in the sum of \$2,196.10 for a total of \$3,670.38, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$1,506.69 is to be paid for weeks at the rate of \$9.10 for 165.57 weeks, until fully paid or until further order of the Director.

In all other regards the Award of the Administrative Law Judge should be, and is hereby affirmed insofar as it is not in contravention to the findings expressed herein.

The fees necessary to affray the expenses of the administration of the Kansas Workers Compensation Act are assessed against respondent and its insurance carrier 50 percent and the Kansas Workers Compensation Fund 50 percent to be paid as follows:

Underwood & Shane	
Transcript of Proceedings	\$301.00
Paula A. Keller	
Deposition of Teresa Moser	Unknown
Paula A. Keller	

Deposition of Hyong Perkins	Unknown
Paula A. Keller	
Deposition of Karyla Campbell	Unknown
Avery Reporting Service, Inc.	
Deposition of Dr. Timothy Birney	Unknown
Hyatt Court Reporting & Video	
Deposition of Dr. Donald Harder	Unknown
Paula A. Keller	
Deposition of Arturo Lovington, Jr.	Unknown
Underwood & Shane	
Deposition of Dr. C. Reiff Brown	\$332.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert A. Levy, Garden City, KS.  
James M. McVay, Great Bend, KS.  
Mark McFarland, Garden City, KS.  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director